

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

JANSSEN PHARMACEUTICA N.V., and )  
JANSSEN PHARMACEUTICA )  
PRODUCTS, L.P., )

Plaintiffs and Counterclaim  
Defendants,

V.

MYLAN PHARMACEUTICALS INC.,

## Defendant and Counterclaim Plaintiff.

JANSSEN PHARMACEUTICA N.V. and  
JANSSEN PHARMACEUTICA  
PRODUCTS, L.P.,

Plaintiffs and Counterclaim  
Defendants,

V.

DR. REDDY'S LABORATORIES, LTD.  
and  
DR. REDDY'S LABORATORIES, INC.,

## Defendants and Counterclaim Plaintiffs.

Civ. Action No. 2:03-CV-06220

Judge John C. Lifland

Magistrate Judge Mark Falk

Civ. Action No. 2:03-CV-06185

Judge John C. Lifland

Magistrate Judge Mark Falk

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**BRIEF IN SUPPORT OF DEFENDANTS' MOTION TO SEAL THE NON-REDACTED BRIEF AND DECLARATION FILED IN SUPPORT OF THEIR MOTION FOR AN ORDER DIRECTING ENTRY OF CERTAIN ADMITTED FACTS INTO THE "STIPULATED FACTS" SECTION OF THE PRETRIAL ORDER OR, IN THE ALTERNATIVE, REQUESTING THAT THE COURT TAKE JUDICIAL NOTICE OF THESE ADMITTED FACTS**

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## **I. Preliminary Statement**

Defendants Mylan Pharmaceuticals Inc., Dr. Reddy's Laboratories, Ltd. and Dr. Reddy's Laboratories, Inc. ("Defendants") submit this Brief In Support of their Motion Pursuant To Local Civil Rule 5.3(c), to Seal the non-redacted Brief and the non-redacted Declaration of Jeffrey Soos filed in support of their MOTION FOR AN ORDER DIRECTING ENTRY OF CERTAIN ADMITTED FACTS INTO THE "STIPULATED FACTS" SECTION OF THE PRETRIAL ORDER OR, IN THE ALTERNATIVE, REQUESTING THAT THE COURT TAKE JUDICIAL NOTICE OF THESE ADMITTED FACTS AND THE BRIEF.

## **II. Legal Argument**

### **A. Legal Standards**

Pursuant to the May 11, 2004, Protective Order entered by the Court (D.I. No. 11), Defendants respectfully request that the Court file under seal the non-redacted Brief and the non-redacted Declaration of Jeffrey Soos filed in support of their MOTION FOR AN ORDER DIRECTING ENTRY OF CERTAIN ADMITTED FACTS INTO THE "STIPULATED FACTS" SECTION OF THE PRETRIAL ORDER OR, IN THE ALTERNATIVE, REQUESTING THAT THE COURT TAKE JUDICIAL NOTICE OF THESE ADMITTED FACTS. Should the Court conclude that Local Civil Rule 5.3 supersedes the Protective Order, Defendants assert that the non-redacted Brief and the non-redacted Declaration of Jeffrey Soos filed in support of their MOTION FOR AN ORDER DIRECTING

ENTRY OF CERTAIN ADMITTED FACTS INTO THE "STIPULATED FACTS" SECTION OF THE PRETRIAL ORDER OR, IN THE ALTERNATIVE, REQUESTING THAT THE COURT TAKE JUDICIAL NOTICE OF THESE ADMITTED FACTS are eligible to be sealed pursuant to Local Civil Rule 5.3(c).

Local Civil Rule 5.3(c) places the burden of proof on the moving party as to why a motion to seal or otherwise restrict public access should be granted.

Specifically, it requires a showing of:

- (a) the nature of the materials or proceedings at issue;
- (b) the legitimate private or public interest which warrant the relief sought;
- (c) the clearly defined and serious injury that would result if the relief sought is not granted; and
- (d) why a less restrictive alternative to the relief sought is not available.

Defendants' MOTION FOR AN ORDER DIRECTING ENTRY OF CERTAIN ADMITTED FACTS INTO THE "STIPULATED FACTS" SECTION OF THE PRETRIAL ORDER OR, IN THE ALTERNATIVE, REQUESTING THAT THE COURT TAKE JUDICIAL NOTICE OF THESE ADMITTED FACTS relates to the above-identified lawsuits brought by Janssen Pharmaceutica N.V. and Janssen Pharmaceutica Products, L.P. ("Janssen") claiming infringement of U.S. Patent No. 4,804,663 ("the '663 patent") resulting from the

filing of Abbreviated New Drug Applications (“ANDAs”) by Mylan Pharmaceuticals Inc. and Dr. Reddy’s Laboratories, Ltd./Dr. Reddy’s Laboratories, Inc. for the marketing of the antipsychotic drug, risperidone. Discovery in this patent infringement litigation has resulted in the disclosure of information alleged by Janssen to be sensitive scientific, trade secret and proprietary business information, that has never been revealed to the public. The nature of the materials sought to be sealed is not only confidential but also is alleged to be commercially sensitive, because a competitor could utilize the information to its advantage in competing with Janssen.

**B. Request to Seal the Non-Redacted Brief and the Non-Redacted Declaration in Support of Their Motion for an Order Directing Entry Of Certain Admitted Facts Into The "Stipulated Facts" Section of the Pretrial Order or, in the alternative, Requesting That The Court Take Judicial Notice of These Admitted Facts and the Supporting Brief and Exhibits**

Defendants’ MOTION FOR AN ORDER DIRECTING ENTRY OF CERTAIN ADMITTED FACTS INTO THE "STIPULATED FACTS" SECTION OF THE PRETRIAL ORDER OR, IN THE ALTERNATIVE, REQUESTING THAT THE COURT TAKE JUDICIAL NOTICE OF THESE ADMITTED FACTS is based on an admission in the May 15, 2006, Letter to the Court filed in Lieu of Brief from John R. Middleton, Jr. on behalf of Janssen (D.I. No. 56) which is the subject of a Motion to Seal filed by Janssen (see D.I. No. 57) because it allegedly contains confidential Janssen materials. Text from D.I. No. 56 is quoted

in the non-redacted Brief filed in support of the motion. Portions of D.I. No. 56 are presented in the non-redacted Declaration of Jeffrey Soos, also filed in support of the motion.

The materials described above, according to Janssen, contain “Confidential” information, such as Janssen’s research and development efforts and trade secrets. In so designating this information, Janssen alleges that publicly disclosing such trade secrets and other confidential information may pose a substantial risk of harm to Janssen’s legitimate proprietary interests and competitive position.

If relief is not granted, the information designated by Janssen as “Confidential” may be compromised, allegedly exposing Janssen to serious economic and financial risks.

No less restrictive alternative is available because Defendants’ request is narrowly tailored to encompass the information designated by Janssen as “Confidential,” the release of which, according to Janssen, may pose substantial financial and competitive risks to Janssen.

### **III. Conclusion**

For the foregoing reasons, Defendants respectfully request that the Court recognize that there is no other remedy available but to seal the non-redacted Brief and the non-redact Declaration of Jeffrey Soos filed in support of Defendants’

MOTION FOR AN ORDER DIRECTING ENTRY OF CERTAIN ADMITTED

FACTS INTO THE "STIPULATED FACTS" SECTION OF THE PRETRIAL ORDER OR, IN THE ALTERNATIVE, REQUESTING THAT THE COURT TAKE JUDICIAL NOTICE OF THESE ADMITTED FACTS. Defendants respectfully request that the Court grant its Motion to Seal these materials.

Respectfully submitted,

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